

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X		
	:	
In re	:	Chapter 11
	:	
MORNING STAR RESTAURANT	:	Case No. 09-11189 (ALG)
GROUP, LLC,	:	
	:	
Debtor.	:	
	:	
-----X		

**APPLICATION FOR ORDER APPROVING  
APPOINTMENT OF A CHAPTER 11 TRUSTEE**

TO: THE HONORABLE ALLAN L. GROPPER,  
UNITED STATES BANKRUPTCY JUDGE:

Tracy Hope Davis, the United States Trustee for Region 2 (the “United States Trustee”), by and through her counsel, hereby respectfully applies to this Court, pursuant to Rule 2007.1 of the Federal Rules of Bankruptcy Procedure, for an Order approving her appointment of Marianne T. O’Toole as the Chapter 11 trustee in the captioned case. In support thereof, the United States Trustee respectfully states:

1. On March 17, 2009, Morning Star Restaurant Group, LLC (the “Debtor”) filed a voluntary petition for relief under Chapter 11 of title 11, United States Code (the “Bankruptcy Code”).
2. On June 25, 2009, the United States Trustee filed a motion (the “Motion to Dismiss”), pursuant to Section 1112(b) of title 11, United States Code (the “Bankruptcy Code”), seeking an Order dismissing this Chapter 11 case or converting the case to a case under Chapter 7 of the Bankruptcy Code. (ECF Dkt. Nos. 46 and 47).

3. On August 3, 2010, March 24, 2011, April 4, 2011, and April 27, 2011 the Court held hearings (collectively, the “Hearings”) to consider the Motion to Dismiss or Convert.

4. At the hearing held on April 27, 2011, the Court, among other things, determined that there is cause under Section 1112(b) of the Bankruptcy Code to grant the relief requested by the United States Trustee in the Motion to Dismiss or Convert, as well as grounds for the appointment of a Chapter 11 trustee, pursuant to Section 1104 of the Bankruptcy Code.

5. By Order dated April 28, 2011, the Court directed that the United States Trustee appoint a Chapter 11 Trustee in this case. (ECF Dkt. No. 99).

6. Contemporaneously herewith, the United States Trustee is filing with the Court a Notice of Appointment of Chapter 11 Trustee, appointing Marianne T. O’Toole as the trustee (the “Chapter 11 Trustee”) in this case.

7. In making her selection, the United States Trustee consulted with:

- a. The Debtor
- b. Anderson, Kill & Olick, P.C., and
- c. The New York State Department of Taxation and Finance.

8. After consultation with the parties-in-interest listed above, the United States Trustee selected Ms. O’Toole to serve as the Chapter 11 Trustee in this case.

9. To the best of the United States Trustee’s knowledge, Ms. O’Toole has no connections with the Debtor, its creditors and any other parties-in-interest, other than those connections set forth on the Declaration of Disinterestedness of Marianne T. O’Toole, a copy of which is annexed hereto as Exhibit 1.

WHEREFORE, the United States Trustee respectfully requests that the Court enter an Order Approving the Appointment of Marianne T. O'Toole as the Chapter 11 Trustee, pursuant to Section 1104(d) of the Bankruptcy Code, a proposed form of which is annexed hereto as Exhibit 2, and for such other and further relief as the Court deems just.

Dated: New York, New York  
May 4, 2011

Respectfully submitted,

TRACY HOPE DAVIS  
UNITED STATES TRUSTEE

By /s/ Andrea B. Schwartz  
Andrea B. Schwartz  
Trial Attorney  
33 Whitehall Street, 21st Floor  
New York, New York 10004  
Tel. No. (212) 510-0500